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THE HONORABLE ROSANNA MALOUF PETERSON
MAY 14, 2019 AT 6:30 P.M.
WITHOUT ORAL ARGUMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSHUA BRENT STULLER,
individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

CHELAN COUNTY, WASHINGTON;
BILL LARSEN, in his official capacity
as Interim Director of the Chelan
County Regional Justice Center;
LESLIE CARLSON, in her official
capacity as the Chelan County Regional
Justice Center Mental Health Manager;
and their officers, agents, employees,
and successors,

Defendants.

NO. 2:18-cv-00178-RMP

**DEFENDANTS' MOTION
AND MEMORANDUM OF
AUTHORITIES TO COMPEL
PRODUCTION OF
PLAINTIFF'S HIGH SCHOOL
RECORDS**

COME NOW, the Defendants, above-named, by and through their attorney of record, Patrick McMahon of Carlson & McMahon, PLLC, and hereby respectfully move this Court to enter an Order compelling production of Plaintiff Joshua Brent Stuller's high school records from both the Wenatchee High School and Westside High School (alternative high school), both located in the City of Wenatchee, Washington, as part of properly propounded requests for production of documents sent to the Plaintiff on February 27, 2019.

I. MOTION TO COMPEL PRODUCTION

This Motion is made pursuant to FRCP 37, LR 37.1, the subjoined Memorandum of Authorities, the Declaration of Patrick McMahon with Exhibit Nos. 1 and 2, attached thereto and incorporated therein as if fully set forth, as well as the records and files contained herein.

II. MEMORANDUM OF AUTHORITIES COMPELLING PRODUCTION

A. Background.

On or about October 15, 2015, the Plaintiff made comments at a family birthday party about loving his brother and loving him forever, even if he were dead. He had been drinking heavily and his words were troubling to his family

1 members, as they appeared to reflect suicidal ideations on the part of Mr. Stuller.
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3 (See ECF No. 16, Exh. No. 2). The Plaintiff's stepfather advised the Wenatchee
4 Police Department that he had found empty bottles of vodka, as well as a loaded
5 handgun. (Id.). There was also a list of seven (7) individuals who were current, or
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7 former, employees of Herring & Associates, a local property management
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9 company in Wenatchee, as well as maintenance workers who were targeted to be
10 killed by the Plaintiff in the case at bar. (Id.).

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12 **B. Motion to Compel.**

13 On or about On February 27, 2019, Interim Director of the Chelan
14
15 County Regional Justice Center, Bill Larsen, propounded to Plaintiff Joshua
16 Brent Stuller interrogatories and requests for production of documents,
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18 including Plaintiff's high school records, as well as his current community
19 college records. (See Declaration of Patrick McMahon, Exhibit No. 1).

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21 On April 8, 2019, Defense Counsel contacted Plaintiff Counsel Biviano
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23 to discuss the overdue discovery and to determine when the answers and
24 documents would be produced. (See Declaration of Patrick McMahon, Exhibit
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26 No. 2). During the telephone conference, Plaintiff Counsel Biviano informed
27 Defense Counsel that he would not be producing the high school records of his
28 client, Joshua Brent Stuller. (Id.). Plaintiff Counsel Biviano also advised that,
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1 in order to obtain the records, Defense Counsel would need to file a Motion to
2 Compel production. (Id.).

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4 Consequently, on April 8, 2019, Defense Counsel sent a letter to Plaintiff
5 Counsel Biviano confirming the discovery discussions. (See Declaration of
6 Patrick McMahon, Exhibit No. 2).

7 8 9 **III. DISCOVERY STANDARD**

10 Litigants “may obtain discovery regarding any matter not privileged that is
11 relevant to the claim or defense of any party.” Fed. R. Civ. P. 26(b)(1). Relevant
12 information for purposes of discovery is information reasonably calculated to lead
13 to the discovery of admissible evidence. Brown Bag Software v. Symantec
14 Corp., 960 F.2d 1465, 1470 (9th Cir. 1992) (citation omitted). District courts have
15 broad discretion in determining relevancy for discovery purposes, and their
16 rulings are reviewable for an abuse of discretion. Kulas v. Flores, 255 F.3d 780,
17 783 (9th Cir. 2001).

18 19 20 21 **IV. ANALYSIS**

22 Here, Plaintiff complains that, subsequent to being arrested for planning to
23 murder people, he was placed in segregation and, as a result, his preexisting
24 mental issues were exacerbated. As such, the Plaintiff has put into issue his
25 preexisting cognitive and mental status along with this mental health status post
26 incarceration.

1 The school records may provide evidence as to what his cognitive and
2 mental status were prior to his arrest and incarceration. They may provide
3 evidence of mental health testing or mental health behavioral issues potentially
4 relevant to an assessment of damages. These records may go to assist a forensic
5 psychiatrist/psychologist who will conduct an Independent Evaluation of the
6 Plaintiff to determine if, in fact, his incarceration impacted his preexisting
7 psychosis and mental health issues. Moreover, school records are not privileged
8 and are subject to discovery. Further, a comparison of his high school records to
9 his current community college records may provide information regarding the
10 level and extent of any claimed damages. Finally, the Plaintiff can always object
11 to the admissibility of the records once they are produced and analyzed.
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18 V. WAIVER

19 It is well established that a failure to object to discovery requests within the
20 timeframe required constitutes waiver of any objection. Richmark Corp. v.
21 Timber Falling Consultants, 559 F.2d 1468, 1473 (9th Cir. 1992) *citing* Davis v.
22 Fendler, 650 F.2d 1154, 1160 (9th Cir. 1981).
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24

25 Here, Defendants requested production of Plaintiff's school records on
26 February 27, 2019. To date, Plaintiff has not responded in writing to the requests.
27 (See Declaration of Patrick McMahon). On April 8, 2019, ten (10) days past the
28 due date (March 29, 2019) for when the documents should have been produced,
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1 Plaintiff Counsel Biviano simply verbalized that he would not produce the school
2 records as requested in discovery. As such, he has waived any objection to
3 production of the records.
4

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6 **VI. RELIEF REQUESTED**

7 The Defendants respectfully request this Court to enter an Order
8 compelling the Plaintiff to produce a full and complete copy of his Wenatchee
9 High School records, his Westside High School records and any community
10 college records.
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12
13 RESPECTFULLY SUBMITTED THIS 11TH day of APRIL, 2019.

14
15 CARLSON & McMAHON, PLLC

16 By /s/ Patrick McMahon
17 PATRICK MCMAHON, WSBA #18809
18 Attorney for Defendants

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25 WCRP05-02450\PLE Federal\MTN AND MEMO TO COMPEL PRODUCTION OF HIGH SCHOOL RECORDS.4-11-19
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CERTIFICATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on April 11, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Eastern District of Washington using the CM/ECF system which will send notification of such filing to:

Andrew S. Biviano abiviano@pt-law.com

Breean L. Beggs bbeggs@pt-law.com

Mary Elizabeth Dillon bdillon@pt-law.com

Elizabeth A Adams eadams@terrellmarshall.com

Toby James Marshall tmarshall@terrellmarshall.com

And I certify that I have mailed by United States Postal Service the foregoing to the following non CM/ECF participants:

Signed at Wenatchee, Washington on April 11, 2019.

/s/ Patrick McMahon
PATRICK MCMAHON, WSBA #18809